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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-222

LOUISVILLE AND NASHVILLE
RAILROAD COMPANY ----------PETITIONER

versus

COMMONWEALTH OF KENTUCKY,
EX. REL. JAMES E. LUCKETT,
COMMISSIONER OF REVENUE----------RESPONDENT

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

WILLIAM S. RILEY
Assistant Attorney General
Commonwealth of Kentucky
Department of Revenue
Frankfort, Kentucky 40601

Counsel for Respondent

Of Counsel:

Clyde M. Richardson, Jr.
Commonwealth of Kentucky
Department of Revenue
Frankfort, Kentucky 40601

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VERSUS

COMMONWEALTH OF KENTUCKY,
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COMMISSIONER OF REVENUE ----------*Respondent*

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

OPINION BELOW

The opinion below from the Kentucky Court of Appeals is styled *Commonwealth ex rel. Luckett v. Louisville & N. R. Co.*, reported at 479 S.W.2d 15 (1972). That opinion is printed in Appendix B, pages 28-36 of petitioner's brief.

JURISDICTION

Petitioner's application to invoke the jurisdiction of this Court should be denied because it fails to meet the jurisdictional requirements of 28 U.S.C. §1257(3), the proper provision for review of a state court judgment in a civil case on certiorari.

The question the petitioner attempts to present here under the due process clause of the Fourteenth Amendment to the Constitution of the United States has been settled by previous decisions of this Court and therefore presents no substantial federal question.

This Court has previously held on numerous occasions that it is not violative of the due process clause of the Fourteenth Amendment for a state to impose an ad valorem tax on intangibles owned by a domiciliary corporation even though such intangibles are located in another state. *Cream of Wheat Co. v. Grand Forks County*, 253 U.S. 325 (1919); *Newark F. Ins. Co. v. State Bd. of Tax Appeals*, 307 U.S. 313 (1938); and *See Curry v. McCanless*, 307 U.S. 357 (1938); and *Greenough v. Tax Assessors*, 331 U.S. 486 (1946).

This Court has consistently held that no substantial federal question forming a basis for review by this Court of a decision of a state court is presented by a contention of a constitutional right, if the question has been settled by previous decisions of this Court. *Leonard v. Vicksburg, S & P. R. Co.*, 198 U.S. 416 (1904); *Utley v. St. Petersburg*, 292 U.S. 106 (1933); *Hunter v. McHugh*, 320 U.S. 222 (1943).

For the foregoing reason, respondent submits that petitioner's application for certiorari should be denied because it fails to meet the jurdictional requirement of presenting a substantial federal question.

QUESTION PRESENTED

Respondent is not satisfied with Petitioner's statement of the questions presented. Simply stated, the sole question presented is as follows:

> WHETHER THE COURT OF APPEALS OF KENTUCKY CORRECTLY DECIDED THAT, UNDER THE DUE PROCESS CLAUSE OF THE FOUR-

TEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THE COMMONWEALTH OF KENTUCKY MAY LEVY AN AD VALOREM PROPERTY TAX ON INTANGIBLE PROPERTY REPRESENTED PRIMARILY BY INVESTMENTS IN STATE AND MUNICIPAL BONDS, NOTES, AND BANK CERTIFICATES OF DEPOSIT MADE AND SUPERVISED FROM A NEW YORK OFFICE BY OFFICERS OF THE LOUISVILLE AND NASHVILLE RAILROAD, A COMPANY INCORPORATED IN, AND COMMERCIALLY DOMICILED IN KENTUCKY AND CHARTERED ONLY TO ENGAGE IN THE BUSINESS OF A COMMON CARRIER?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Petitioner has correctly stated and printed in Appendix A, pages 15-16 of its brief the pertinent constitutional provisions and statutes involved in this case.

STATEMENT OF THE CASE

Petitioner's statement of the case is substantially correct. Additional material facts and corrections will be set out in the argument which follows.

REASONS FOR DENYING THE WRIT

THE COURT OF APPEALS OF KENTUCKY CORRECTLY DECIDED THAT, UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THE COMMONWEALTH OF KENTUCKY MAY LEVY AN AD VALOREM PROP-

ERTY TAX ON INTANGIBLE PROPERTY REPRESENTED PRIMARILY BY INVESTMENTS IN STATE AND MUNICIPAL BONDS, NOTES, AND BANK CERTIFICATES OF DEPOSIT MADE AND SUPERVISED FROM A NEW YORK OFFICE BY OFFICERS OF THE LOUISVILLE AND NASHVILLE RAILROAD, A COMPANY INCORPORATED IN, AND COMMERCIALLY DOMICILED IN KENTUCKY AND CHARTERED ONLY TO ENGAGE IN THE BUSINESS OF A COMMON CARRIER.

The Kentucky Court of Appeals held against the petitioner in an opinion officially reported in 479 S.W.2d 15, and denied its petition for rehearing on May 12, 1972.

It is the respondent's contention that this decision, which holds that intangible property owned by petitioner but purchased, held, and sold by its New York office did not acquire a business situs there and therefore was subject to Kentucky ad valorem tax, does not violate the due process clause of the Fourteenth Amendment to the United States Constitution and that the assumptions of fact and conclusions of law arrived at by the Kentucky Court of Appeals are eminently correct.

The Kentucky Court of Appeals did not, as contended by the petitioner, decide this case in a manner inconsistent with prior decisions of this Court in *New Orleans v. Stempel*, 175 U.S. 309 (1899); *Bristol v. Washington County*, 177 U.S. 133 (1900); *State Board of Assessors v. Compton National d'Escompte*, 191 U.S. 388 (1903); *Metropolitan Life Insurance Company of New York v. City of New Orleans*, 205 U.S. 395 (1907); and *New York ex rel. Whitney v. Graves, et al.*, 299 U.S. 366 (1937). In all of the above cases except the latter, the determining factors which were held to constitute business situs were those tending to separate situs from the creditor, such as presence in another state of physical evidence of the debt, or of the debtor, or of the security for the debt, in combination with the operation of a con-

tinuous business. In *New York ex rel. Whitney v. Graves, et al., supra,* the question before this Court involved the constitutional validity of a tax assessed by the State of New York upon profits realized by a nonresident upon the sale of a right appurtenant to membership in the New York Stock Exchange. In challenging the jurisdiction of New York to levy the tax, the taxpayer contended that his membership could not have a business situs in New York because he and his copartners had always been domiciled in Massachusetts; that they had never had an office or carried on business in New York; and none of their business transactions had ever been conducted on the floor of the Exchange. Contrary to the taxpayer's contentions, this Court upheld the constitutional validity of the New York tax. In holding that the taxpayer's membership in the Exchange had a business situs in New York, this Court noted the peculiar nature of that intangible right and explained in detail the operation of the Exchange and the privileges appurtenant to membership therein. All of these cases recognize the principle that intangible property may acquire a situs for taxation in a state other than at the domicile of its owner if it has become an integral part of some local business, but they do not forbid a state from imposing ad valorem taxes on the intangible property of a domiciliary corporation even though such intangibles are located in another state. This is where they depart from the instant case. They represent only several of a long line of cases which have followed this principle, which, in the legal vernacular, is known as the "integration doctrine."

In its opinion, the Kentucky Court of Appeals acknowledged the soundness and validity of the "integration doctrine" and set out the elements generally recognized by the courts in determining the existence of a business situs of intangible property under that doctrine. But, like other courts, it recognized that, rather than being an ironclad rule susceptible of precise application, the doctrine derives its sustenance from its application to the facts of each individual case. For instance, in *Re United*

Carbon Co., 118 W. Va. 348, 190 SE 546 (1937), the Supreme Court of Appeals of West Virginia stated at page 551:

> "We fully realize that at this time judicial determination of the question of the situs of intangible property for the purpose of taxation cannot be said to have reached the point where any settled and controlling rule can be laid down. Between those cases where the matter of situs renders such property clearly taxable and those cases where the lack of situs renders such property clerly not taxable, there is a 'twilight zone' into which, naturally, most of the controverted cases fall."

In *Smith v. Ajax Pipe Line Co.*, 87 F.2d 567 (8th Cir. 1937), *cert. denied*, 300 U.S. 677 (1937) the following appears at page 571:

> "What constitutes this 'business situs' or 'commercial situs' has not been, probably cannot be, definitely defined. Whether it exists is usually the crucial inquiry in this character of cases."

Also, in *New York ex rel. Whitney v. Graves, et al., supra*, this Court concluded at 299 U.S. page 372:

> "When we speak of a 'business situs' of intangible property in the taxing state we are indulging in a metaphor. We express the idea of *localization* by virtue of the attributes of the intangible right in relation to the conduct of affairs at a particular place. The right may grow out of the actual transactions of a *localized* business or the right may be identified with a particular place because the exercise of the right is fixed exclusively or dominantly at that place. In the latter case the *localization* for the purpose of transacting business may constitute a business situs quite as clearly as the conduct of the business itself." (Emphasis added).

The Kentucky Court of Appeals, at page 17 of its opinion, recognized that:

> "The question of 'business situs' presents a problem. It is difficult to formulate a consistent workable

> rule for determining if intangibles physically located outside the state of a domiciled owner corporation are subject to be taxed by the domiciliary state."

The foregoing authorities make it poignantly clear that under the "integration doctrine" as it has been applied in judicial decisions, including those relied upon by petitioner, there are not and cannot be precise and controlling rules for determining the business situs of intangible property and therefore each case must be decided on its individual facts with the view towards determining where the intangible property at issue is localized. Only a cursory glance at the opinion of the Kentucky Court of Appeals in this case reveals that it did exactly that, and it is absurd for petitioner to contend that it misconstrued five early decisions of this Court, all of which are clearly distinguishable on their facts.

Conspicuous by its absence in petitioner's brief, is the case of *Wheeling Steel Corp. v. Fox*, 298 U.S. 193 (1935), which is the pivotal and singular most important decision by this Court relating to the question of determining the business situs of intangible property for purposes of taxation. In that case, a Delaware corporation had qualified to do business in West Virginia, Minnesota, and Ohio, and had its principal manufacturing plants in the latter state. It maintained sales offices in various cities throughout the country, but its general business offices were located in Wheeling, West Virginia. The chairman of its board, its president, treasurer, secretary, and chief counsel resided in that city. There its stockholders' and directors' meetings were held, and there its general books and accounting records were kept. Sales contracts were negotiated and orders taken at its various sales offices subject to approval or rejection by the officers at Wheeling . The assessed value of its tangibles and real property in West Virginia was only 27.1 percent of the assessed value of all such property owned by it. Normally, not more than twenty percent of its bank deposits within and without the state were derived from the sale of products manufac-

ured in the state. Under statutes requiring assessment of all intangibles localized within the state, the taxing officers of West Virginia had assessed all the corporation's bank deposits and accounts receivable. The company objected on the ground that the statutes were in violation of the Fourteenth Amendment to the Constitution of the United States for the reason that they operated to tax property over which the state had no jurisdiction. The state supreme court overruled the objections, except for a deduction for the amount of intangibles which had been taxed by Ohio, and held that there had been "such a localization of the corporation's business at Wheeling" that there was imparted "to its entire intangible property a prima facie situs for taxation at that place." After carefully analyzing the facts and the long line of cases (including those relied upon by petitioner except *New York ex rel. Whitney v. Graves, supra*) in which the "integration doctrine" had been developed, this Court concluded that the question presented was whether the intangible property should be deemed to be localized in West Virginia. In affirming the state supreme court and answering the question in the affirmative, this Court concluded at 298 U.S. pages 211-212 that:

> "The Corporation established in West Virginia what has aptly been termed a 'commercial domicile.' It maintains its general business offices at Wheeling and there it keeps its books and accounting records. There its directors hold their meetings and its officers conduct the affairs of the Corporation. There, as appellant's counsel well says, *'the management functioned.'* The Corporation has manufacturing plants and sales offices in other states. But what is done at those plants and offices is determined and controlled from the center of authority at Wheeling. The Corporation has made that *the actual seat of its corporate government.*" (Emphasis added).

A reading of Chief Justice Hughes' opinion clearly delineates that in determining where intangible property is deemed to be localized, the important factor to search for is "commercial dom-

icile." This factor can only be found by examining the corporate structure and operations to determine where its management functions and where its actual seat of corporate government exists. Of course, this extension of the application of the "integration doctrine" lightens the task of establishing the prerequisites of jurisdiction for an ad valorem tax on intangibles, but it is sound because it goes far to deter the establishment of purely nominal corporate domiciles as a means of tax evasion.

In this case, Kentucky imposed an ad valorem tax on intangibles owned by a domiciliary corporation which purchased, held, and sold them through its office in New York, where, by constitutional prohibition, such intangibles are not subject to an ad valorem tax. As previously pointed out, the *Wheeling Steel Corporation* case involved a more complicated situation in which West Virginia imposed an ad valorem tax on intangibles owned by a Delaware corporation which maintained plants and sales offices in various states, but its general business office was in West Virginia, where the "management functioned." However, within the factual framework of this case, it cannot be disputed, and indeed, the petitioner does not dispute, that the Kentucky Court of Appeals relied upon and followed religiously the teachings of this Court in *Wheeling Street Corp. v. Fox, supra.* Clearly, no other conclusion can be reached when one reads the court's statement which appears on page 19 of its opinion. There, the following reasoning appears:

> "In our opinion, there are elements present in this case that override the factors relied upon by the L & N and are controlling in our determination that the evidence does not support the establishment of a business situs in a state other than Kentucky.
>
> "The evidence establishes that the purchase and sale of securities by the New York office are dictated by the financial needs and obligations of the L & N. The working capital of the New York office is comprised of surplus funds earned by the L & N. The New York office maintains detailed financial records of the

> L & N. Liquidity is a most important factor in the purchase and sale of the securities. In order to meet the day-to-day demands of the L & N, the investments are made for a period consisting of only several hours or a very few days. The entire working capital in, as well as any profits earned by, the New York office are subject to the instant demands of the L & N. The active and constant contact the domiciled corporation has with and over the New York office subjects the activities there to the control of and domination by the L & N. The L & N conducts no business as a common carrier in New York. These factors convince us that the New York enterprise is simply a convenient method of carrying on a vital and indispensable part of the company's operation as a common carrier by aiding the L &N to finance its corporate business. In our opinion the evidence requires the conclusion that while the buying and selling of securities by the L & N in New York constitute business transactions, they do not amount to a separate and independent securities business in New York. This is not to say that in order for a business to come within the integration doctrine or to have a business situs it must have no connections at all with the individual or corporation that happens to be its owner. We are saying that each case must be examined to determine if the elements present are such as to establish that the nondomiciliary business activities are a separate entity and independent from the business of the domiciled corporation."

This statement is evidently the basis for petitioner's contention that the Court of Appeals meant that business situs can only be acquired if the business activities under scrutiny constitute a "business in the corporate charter sense." Of course, the contrary is true, because the foregoing statement makes it strikingly clear that the court examined the facts of this case to determine where petitioner's management functions and where its seat of corporate government exists. Without specifically using that terminology, it found petitioner's "commercial domicile" to be Kentucky. Therefore, in determining business situs under the

"integration doctrine," the Kentucky Court of Appeals most certainly has not misconstrued this Court's ruling in the *Wheeling Steel Corp.* case, which is, of course, the controlling decision on the issue.

As pointed out previously, the *Wheeling Steel Corp.* case did not involve the constitutional validity of a state ad valorem tax levied on intangibles owned by a domiciliary corporation but held by it in another state. However, that being the case here, the Kentucky Court of Appeals' decision finds support in this Court's ruling in the more analogous case of *Newark F. Ins. Co. v. State Bd. of Tax Appeals, supra.* In that case the State of New Jersey imposed a personal property tax upon the paid-in capital stock and accumulated surplus of a New Jersey fire insurance company. The company's executive office was in New York. There its accounts were kept and its general affairs were conducted. Its cash and securities were located in New York banks except for a small amount deposited in New Jersey banks. The Newark Fire Insurance Company attacked the assessment on the grounds that, under the due process clause ofthe Fourteenth Amendment, New Jersey did not have jurisdiction to impose the tax because the intangibles had acquired a business situs and the corporation a tax situs in New York. In holding the New Jersey tax not violative of the due process clause of the Fourteenth Amendment, this Court said at 307 U.S. page 318:

> "When a state exercises its sovereign power to create a private corporation, that corporation becomes a citizen, and domiciled in the jurisdiction, of its creator. There it must dwell. The dominion of the state over its creature is complete. In accordance with the ordinary recognition of the rule of mobilia sequuntur personam to determine the taxable situs of intangible personality, the presumption is that such property is taxable by the state of the corporation's origin."

Mr. Justice Frankfurter, in his concurring opinion, made the following statement at 307 U.S. page 324:

> "Chapter 236 of the New Jersey Laws of 1918, as applied to the circumstances of these two cases, clearly does not offend the Constitution. An substance, such legislation has heretofore been found free from constitutional infirmity. Cream of Wheat Co. v. Grank Forks County, 253 U.S. 325, 64 L.ed. 931, 40 S.Ct. 558, affirming 41 N.D. 330, 170 N.W. 863. During all the vicissitudes which the so-called 'jurisdiction-to-tax' doctrine has encountered since that case was decided, the extent of a state's taxing power over a corporation of its own creation, recognized in the Cream of Wheat Co. case, has neither been restricted nor impaired. That case has not been cited otherwise than with approval."

The corporate origin and domicile of the L & N Railroad is Kentucky. Accordingly, under authority of the *Newark Fire Insurance Company* case, it must pay Kentucky ad valorem tax on its intangibles even though they are located in New York.

The case of *Curry v. McCanless, supra,* while not factually in point with the present case, provides a thorough analysis of the theoretical and practical considerations regarding the taxation of intangibles. It is persuasive in this case. Beginning at page 365, Mr. Justice Stone made the following statement on behalf of the Court:

> "Very different considerations, both theoretical and practical, apply to the taxation of intangibles, that is, rights which are not related to physical things. Such rights are but relationships between persons, natural or corporate, which the law recognizes by attaching to them certain sanctions enforceable in courts. The power of government over them and the protection which it gives them cannot be exerted through control of a physical thing. They can be made effective only through control over and protection afforded to those persons whose relationships are the origin of the rights. (Citing cases). Obviously, as sources of actual or potential wealth – which is an appropriate measure of any tax imposed on ownership or its exercise – they cannot be disassociated from the persons from whose relation-

ships they are derived. These are not in any sense fictitious. They are indisputable realities.

"The power to tax 'is an incident of sovereignty, and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are upon the soundest principles, exempt from taxation.' M'Culloch v. Maryland, 4 Wheat. 316, 429, 4 L.ed. 579, 607. *But this does not mean that the sovereign power of the state does not extend over intangibles of a domiciled resident because they have no physical location within its territory, or that its power to tax is lost because we may choose to say they are located elsewhere.* A jurisdiction which does not depend on physical presence within the state is not lost by declaring that it is absent. From the beginning of our constitutional system control over the person at the place of his domicile and his duty there, common to all citizens, to contribute to the support of the government have been deemed to afford an adequate constitutional basis for imposing on him a tax on the use and enjoyment of rights in intangibles measured by their value.

* * *

"Whether we regard the right of a state to tax as founded on power over the object taxed, as declared by Chief Justice Marshall in M'Culloch v. Maryland, 4 Wheat. 316, 4 L.ed. 579, supra, through dominion over tangibles or over persons whose relationships are the source of intangible rights, or on the benefit and protecion conferred by the taxing sovereignty, or both, *it is undeniable that the state of domicile is not deprived, by the taxpayer's activities elsewhere, of its constitutional jurisdiction to tax, and consequently that there are many circumstances in which more than one state may have jurisdiction to impose a tax and measure it by some or all of the taxpayer's intangibles.* Shares of corporate stock may be taxed at the domicile of the shareholder and also at that of the corporation which the taxing state has created and controls; and income

> may be taxed both by the state, where it is earned and by the state of the recipient's domicile. Protection, benefit, and power over the subject matter are not confined to either state. The taxpayer who is domiciled in one state but carries on business in another is subject to a tax there measured by the value of the intangibles used in his business. (Citing cases). *But taxation of a corporation by a state where it does business, measured by the value of the intangibles used in its business there, does not preclude the state of incorporation from imposing a tax measured by all its intangibles.* (Citing cases including *Cream of Wheat Co. v. Grand Forks County*, 253 U.S. 329). (Emphasis added).

Still another case, though not exactly in point on its facts, sets forth language supporting the decision of the Court of Appeals in this case. In *Greenough v. Tax Assessors, supra*, Mr. Justice Reed, speaking for the majority of this Court at 331 U.S. pages 492-493, stated as follows:

> "The precedents, holding it unconstitutional for a state to tax tangibles of a resident that are permanently beyond its boundaries, have not been applied to intangibles where the documents of owner interest are beyond the confines of the taxing jurisdiction or where the choses in action are mere promises of a nonresident without documents. One reason that state taxation of a resident on his intangibles is justified is that when the taxpayer's wealth is represented by intangibles, the tax gatherer has difficulty in locating them and there is uncertainty as to which taxing district affords benefits or protection to the actual property that the intangibles represent. There may be no 'papers'. If the assessment is not made at the residence of the owner, intangibles may be overlooked easily by other assessors of taxes. A state is dependent upon its citizens for revenue. Wealth has long been accepted as a fair measure of a tax assessment. As a practical mode of collecting revenut, the states unrestricted by the federal Constituion have been accustomed to assess property taxes upon intangibles 'wherever actually held or deposited,' be-

longing to their citizens and regardless of the location of the debtor. *So long as a state chooses to tax the value of intangibles as a part of the taxpayer's wealth, the location of the evidences of ownership is immaterial. If the location of the documents was controlling, their transfer to another jurisdiction would defeat the tax of the domiciliary state.* As a matter of fact, there is more reason for the domiciliary state of the owner of the intangibles than for any other taxing jurisdiction to collect a property tax on the intangibles. Since the intangibles themselves have no real situs, the domicile of the owner is the nearest approximation, although other taxing jurisdictions may also have power to tax the same intangibles. Normally the intangibles are subject to the immediate control of the owner. This close relationship between the intangibles and the owner furnishes an adequate basis for the tax on the owner by the state of his residence as against any attack for violation of the Fourteenth Amendment. The state of the owner's residence supplies the owner with the benefits and protection inherent in the existence of an organized government. He may choose to expand his activities beyond its borders but the state of his residence is his base of operations. It is the place where he exercises certain privileges of citizenship and enjoys the protection of his domiciliary government." (Emphasis added).

This Court's ruling in the above cases, *Newark F. Ins. Co. v. State Bd. of Tax Appeals, supra*; *Curry v. McCanless, supra*; *Greenough v. Tax Assessors, supra*; and *Cream of Wheat Co. v. Grand Forks County, supra*, are still correct and subsisting statements of the law, and petitioner's position is totally inconsistent with the rules established therein. On the other hand, the Court of Appeals' decision in this case is in complete accord with that line of cases.

Another pertinent point which must not be overlooked is that the State of New York does not impose an ad valorem tax on petitioner's intangibles property located there. The taxing authorities of that state are prohibited from levying such a tax

because of the provisions of Section 3, Article XVI of the Constitution of the State of New York which reads, in pertinent part, as follows:

> ". . . Intangible personal property shall not be taxed ad valorem nor shall any excise tax be levied solely because of the ownership or possession thereof, except that the income therefrom may be taken into consideration in computing any excise tax measured by income generally . . . ."

The above constitutional provision is undoubtedly the underlying reason for the petitioner's urgent, but unwarranted argument on page 13 of its brief. There it is argued that the protection afforded by the Fourteenth Amendment would be "greatly diluted" if the decision of the Court of Appeals of Kentucky is permitted to stand. Petitioner cries that the decision would permit states to impose ad valorem taxes on intangible property owned by domiciliary corporations but invested and held by them in states other than their domicile. Stated very directly and simply, petitioner urges this Court to review and reverse the Kentucky court which, through its decision, has not permitted it, as a domiciliary corporation, to evade the state's ad valorem taxes on intangibles by establishing an investment office in New York where a similar tax is not imposed. That there are no constitutional prohibitions against the State of Kentucky imposing an ad valorem tax on the intangible property of a corporation incorporated and domiciled there, regardless of where the intangibles are located, has already been established.

CONCLUSION

For the reasons stated above, certiorari should be denied.

Respectfully submitted,

Assistant Attorney General
WILLIAM S. RILEY
Commonwealth of Kentucky
Department of Revenue
Frankfort, Kentucky 40601

Counsel for Respondent

Proof of Service

I, William S. Riley, counsel for respondent, hereby certify that the foregoing Brief was served on petitioner by depositing four copies of same in the United States mail, first class postage prepaid, on September 1, 1972, addressed to counsel for petitioner, Honorable Joseph L. Lenihan, Honorable Philip M. Lanier, Honorable Robert C. Moore, 908 West Broadway, Louisville, Kentucky 40201, and Honorable Marion Rider, 202 St. Clair Street, Frankfort, Kentucky 40601.

William S. Riley

WILLIAM S. RILEY
Assistant Attorney General
Commonwealth of Kentucky
Department of Revenue

Counsel for Respondent